No. 14

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PETITIONEER

v.

ROBERT FORTIER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

AMICUS CURIAE BRIEF

BY

JOHN G. SIMMS
Miami, Florida

Statutes:

Texts and Reports:

No. 14.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

UNITED STATES OF AMERICA,
Petitioner,

vs.

ROBERT FORTIER et al.

BRIEF

Amicus Curiae by Elmer G. Doernhoefer.

CONSENT.

The undersigned parties to the above-entitled cause, by and through their respective counsel of record, hereby consent and agree that Elmer G. Doernhoefer shall be permitted to file a brief amicus curiae in the above-entitled cause, provided said brief shall be filed with the Clerk of the Supreme Court on or before October 1, 1951.

(Signed) Philip B. Perlman,
Solicitor General of the United States.

(Signed) Stanley M. Brown,
Counsel for Respondent Fortier.

(Signed) Meyer Green,
Counsel for Respondents Marino.

PRELIMINARY STATEMENT.

Elmer G. Doernhoefer is appellant in the case of Doernhoefer v. United States, No. 14,263, now pending in the United States Court of Appeals, Eighth Circuit. The facts in that case are so substantially similar to the facts in the Fortier case that Doernhoefer has secured the consent of the parties to the latter case to file this brief amicus curiae.

On April 11, 1946, Elmer G. Doernhoefer filed an Application for Preference Rating to secure authorization under the provisions of Priorities Regulation 33 to erect 16 dwelling units in St. Louis, Missouri. The Federal Housing Administration reviewed his application and authorized him to proceed with the project, assigning a project serial number thereto and establishing a maximum sales price for each unit. Doernhoefer started five units in July, 1946, and started five other units in October, 1946. Six units which had not been started by Dec. 23, 1946, were removed from the project and built under Office of Housing Expediter Regulation HPR, issued that date, which removed maximum sales prices. The ten units were completed during the period April to July, 1947, and were deeded to purchasers thereof from May 26, 1947, to August 10, 1947.

On May 8, 1950, approximately three years later, the United States filed an action against Doernhoefer in the United States District Court, Eastern District of Missouri, Eastern Division, alleging that he had made certain unauthorized changes in the construction of said dwelling units, and that five of said dwelling units had been sold at prices in excess of the maximum sales prices fixed by the Federal Housing Administration. Doernhoefer defended that he had made a clerical mistake at the time he requested a price increase on said ten identical units, and said mistake was not discovered until just prior to suit against him. The United States maintained that authority to bring such action was given to the United States by Section 7 (a) of the Veterans Emergency Housing Act of 1946 (60 Stat. 207).

ARGUMENT.

The District Courts Do Not Have Jurisdiction of This Type of Action Because the United States Is Not Entitled to Bring This Type of Action to Recover for Purchasers Sums Paid by Them in Excess of the Maximum Sales Price.

A. There is no specific provision in the Veterans Emergency Housing Act of 1946 authorizing either the United States or the Housing Expediter to bring an action requiring a builder to refund to purchasers amounts paid in excess of the maximum sales prices. It is well settled that where a statute creates a right which provides a special remedy, that remedy is exclusive.[1] The rule is stated in 50 Am. Jur., Statutes, Sec. 596, pp. 593, 594, as follows:

> "It is an established principle, that if a statute creating a new right or cause of action where none existed before, also provides an adequate remedy for the enforcement of the right created, and the statutory remedy is not by its terms cumulative, the remedy thus prescribed is exclusive. In such case the remedy must be pursued in the enforcement of the right to the exclusion of any other remedy."

Section 7 of the Veterans Emergency Housing Act of 1946 provides three different forms of enforcement:

(a) The Expediter may apply to the appropriate court for an order enjoining any acts or practices which constitute or will constitute a violation of Section 5 of said Act, and in such proceeding may secure a permanent or temporary injunction, restraining order or other order;

(b) The United States may bring criminal proceedings to punish willful violations, and

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1 Wilder Manufacturing Co. v. Corn Products Refining Co., 236 U. S. 165, 174, 175; Arnson v. Murphy, 109 U. S. 238; Barnet v. National Bank, 98 U. S. 555, 558; Farmers' & Mechanics' National Bank v. Dearing, 91 U. S. 29, 35; United States v. Babcock, 250 U. S. 328, 331.

(c) A person purchasing housing accommodations may, within one year from the date of the occurrence of the violation, bring an action for the amount by which the consideration he paid for such housing accommodation exceeds the maximum selling price, plus reasonable attorneys' fees and costs.

The only remedy specified in said Act to secure a money judgment is the one given to the purchaser of the housing accommodations to bring an action within one year to recover the amount by which the consideration he paid for his housing accommodations exceeded the maximum selling price.

B. **The rule of restitution recognized in the cases of Porter v. Warner Holding Company, 328 U. S. 395, and United States v. Moore, 340 U. S. 616, should not be extended to apply to the Veterans Emergency Housing Act of 1946 because such extension will be greatly against the intent of Congress.** In seeking restitution for violations of the Veterans Emergency Housing Act of 1946 the United States claims authority so to act from Section 7 (a) thereof, which is as follows:

> "Sec. 7 (a). Whenever, in the judgment of the Expediter, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 5 of this Act he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Expediter that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order or other order may be granted, and if granted shall be granted without bond."

The wording of the above section is almost identical to the wording of Section 205 (a) of the Emergency Price

Control Act of 1942 and Section 206 (b) of the Housing and Rent Act of 1947, which have been considered by this Court in the cases of Porter v. Warner Holding Company, 328 U. S. 395, and United States v. Moore, 340 U. S. 616. We recognize that in both those cases this Court has broadly interpreted the meaning of the phrase "or other order" to encompass the power of the Housing Expediter or the United States to seek, and the lower courts to grant, restitution of overcharges.

When Congress enacted the Emergency Price Control Act of 1942 and the Housing and Rent Act of 1947 it desired to accomplish purposes substantially different from the purpose it had in enacting the Veterans Emergency Housing Act of 1946.

The purpose of the Emergency Price Control Act of 1942 (56 Stat. 23) is contained in Section 1 (a) thereof, and is as follows:

> "Section 1 (a). It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors and persons dependent on life insurance, annuities and pensions from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities and other institutions and to the Federal, State and local governments;

which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values; to stabilize agricultural prices in the manner provided in section 3, and to permit voluntary co-operation between the Government and producers, processors and others to accomplish the aforesaid purposes. It shall be the policy of those departments and agencies of the Government dealing with wages (including the Department of Labor and its various bureaus, the War Department, the Navy Department, the War Production Board, the National Labor Relations Board, the National Mediation Board, the National War Labor Board and others heretofore or hereafter created), within the limits of their authority and jurisdiction to work toward a stabilization of prices, fair and equitable wages and cost of production."

The purpose of the Housing and Rent Act of 1947 (61 Stat. 197) is set forth in Section 201 (b) as follows:

"Sec. 201 (b). The Congress, therefore, declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas. Such restrictions should be administered with a view to prompt adjustments where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable

to their housing accommodations, and under procedures designed to minimize delay in the granting of necessary adjustments, which, so far as practicable, shall be made by local boards with a minimum of control by any central agency."

The purpose of the Veterans Emergency Housing Act of 1946 (60 Stat. 207) is set forth in Section 1 (a) of said Act, as follows:

"Sec. 1 (a). The long-term housing shortage and the war have combined to create an unprecedented emergency shortage of housing, particularly for veterans of World War II and their families. This requires during the next two years a house-construction program larger than ever before. The first step toward such a program is to overcome the serious shortages and bottlenecks with respect to building materials, to expedite the production of such materials, to allocate them for house construction and other essential purposes, and to accelerate the production of houses with preferences for veterans of World War II and at sales prices or rentals within their means. To carry out this program, it is necessary to invest a housing expediter with adequate powers, including the power to issue policy directives. Accomplishment of these objectives will assist returning veterans to acquire housing at fair prices, stimulate industry and employment, prevent a post-emergency collapse of values in the housing field, and promote a swift and orderly transition to a peacetime economy."

Thus it will be seen that the main, if not the sole, purpose of the Emergency Price Control Act of 1942 and the Housing and Rent Act of 1947 is to prevent inflation and achieve reasonable stability in prices and rents. By contrast the purpose of the Veterans Emergency Housing Act

of 1946 was to promote the largest house construction program ever experienced, in a period of two years. Materials were expedited and allocated for house construction. The program was designed to assist returning veterans to acquire houses at fair prices, stimulate industry and employment, and for other noteworthy purposes. The point is that both the Emergency Price Control Act of 1946 and the Housing and Rent Act of 1947 were merely regulatory Acts designed to keep the economy of the Country in an uninflated status quo. The Veterans Emergency Housing Act was enacted to stimulate industry, employment, accelerate production, encourage building, and to that degree intended to promote certain affirmative action, primarily, of course, by encouraging contractors in providing houses for veterans. A builder who cooperates with the Government's construction program should be accorded different treatment at the hands of the law than a violator of the price or rent control program.

Since the purposes of the Acts are totally dissimilar there is no compulsion upon the Court to give an identical construction to said acts. Such identical construction in fact distorts the intended meaning of the legislation.

A review of the Congressional history and legislative background of the Veterans Emergency Housing Act of 1946 forces the clear conclusion that Congress never intended restitution as one of the enforcement remedies of said Act.

The Veterans Emergency Housing Act of 1946 (H. R. 4761) passed the House of Representatives containing provision authorizing the purchaser to sue for treble damages and authorizing the Housing Expediter to bring an action on behalf of the United States. The Subcommittee on Housing of the Senate, Committee on Banking and Currency, held hearings during the period March 26-30, 1946,

following which Senator Alben W. Barkley, Chairman of the Subcommittee, submitted on April 5, 1946, Report No. 1130 (79th Congress, Second Session), containing a summary of the bill. On page 12 of the Report, Section 7 is as follows:

"(a) Grants the Housing Expediter power to apply to the appropriate Court for orders enjoining acts or practices which would violate the provisions of Section 5, and grants to the Housing Expediter access to the Courts to enforce compliance with the provisions of that Section.

"(b) Provides for a fine of not more than $5,000.00 or imprisonment for not more than a year, or both, for any person convicted of unlawfully violating any provision of Section 5 or of knowingly making statements or entries in the records or reports required to be kept in connection with the maximum sales-price provisions of Section 3.

"(c) Vests in the District Courts jurisdiction of criminal proceedings for violation of the provisions of Section 5 and also vests in the District Courts, concurrently with State and Territorial Courts of all other proceedings under Section 7.

"(d) Provides that if any person selling housing accommodations violates the regulations prescribing the maximum sales-price, the purchaser may bring an action for treble the amount by which the consideration exceeded the maximum sales-price. The time limitation on such actions is one year from the date of the occurrence of the violation. If within sixty days from the date of such violation the buyer fails to bring action, the Housing Expediter is authorized to bring such action on behalf of the United States. The time limitation on any such action is likewise one year from the date of the violation. If any such

action is brought by the Expediter, the purchaser cannot bring an action for the same violation."

It is to be noted that nowhere is made any mention of restitution as being part of the enforcement scheme. It should further be noted that the time limitation of one year on any actions is specifically mentioned twice in said Section 7.

On April 9, 1946, when the Veterans Emergency Housing Act of 1946 was being considered on the floor of the Senate, Section 7 (d) was amended by eliminating the word treble. The Senate further was in doubt as to the exact meaning of the remainder of Section 7 (d), some confusion existing as to what type of an action the Expediter should be authorized to bring.[2]

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2 "Mr. Saltonstall. Mr. President, I should like to ask the distinguished Senator from Kentucky (Mr. Barkley) another question along the lines of the one which I asked yesterday. If the bill is being amended for technicalities in order to improve it, I respectfully call his attention again to Paragraph (d) at the bottom of Page 31 which allows a person to sue for treble damages if he brings suit within a year. On Page 32 there is a provision that if the buyer fails to bring the action under this subsection within sixty days from the date of the violation, the Expediter may bring the action on behalf of the United States within one year from the date of the violation. **The provision does not say whether the Expediter shall bring a criminal or civil action, how much the damages shall be, or to whom that shall be paid.** In another section of the bill the Expediter is authorized to bring criminal actions under certain circumstances. It seems to me that this section, which is a technical section, should be clarified.

Mr. Barkley. Mr. President, we have discussed this question, and I think we can arrive at an understanding about it. As the Senator knows, of course, the treble damage theory, which we discussed yesterday, was originally included in the O. P. A. statute which was intended as a civil penalty against violators of price regulations. It was carried in this bill as a civil penalty on behalf of the aggrieved person. I do not think it is vital to the administration of this bill, and I am perfectly willing to move, on Page 32, Line 1, to strike out the word treble so as to give the aggrieved party the right to bring suit for the amount by which the price has been exceeded.

Mr. Saltonstall. Personally I think it would improve the bill if the word 'treble' were left out; but I think that would not cure the entire technical difficulty, which I would like to see cured.

Mr. Barkley. Is the Senator now referring to the omission of any language stating who shall have the benefit of the recovery if it should be had?

Mr. Saltonstall. That is correct.

Mr. Barkley. At this moment I should not like to offer an amendment on that point, because it may be, under the theory of suits instituted by the Government of the United States, that whatever is recovered should go into the Treasury of the United States; and in that case, the aggrieved person, who had paid the excess, would receive no benefit. I

On April 10, 1946, the Senate was again considering amendments to the bill. On that day, Mr. Barkley offered an amendment limiting the right of the Housing Expediter to bring an action for violations. Mr. Barkley, speaking on behalf of the Senate, stated that he did not consider such a PROVISION important. It was Mr. Barkley's opinion that if the purchaser of a house who has been compelled to pay more than the ceiling price is not willing to bring a suit to recover the difference, the Housing Expediter should not be charged with that obligation.[3]

It should be noted that such provision was not eliminated because the remedy of restitution was available to take care of such a situation. Nowhere is restitution mentioned in the discussion on the Senate floor. There was no sentiment in the Senate that the Housing Expediter or the Government of the United States should bring actions to recover sums for the benefit of purchasers. On

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think we can devise language on that point which will be satisfactory. At this time I should like to have the amendment adopted by eliminating the word 'treble' on Page 32, Line 1.

The President pro tempore. Without objection, the amendment is agreed to." (Emphasis supplied.)

(92 Congressional Record, 1946, Pages 3326, 3327.)

3 "Mr. Barkley. Mr. President, I wish to offer an amendment which I am sure will be agreed to. The amendment is on Page 32, to strike out lines four to nine, inclusive.

The President pro tempore. The amendment offered by the Senator from Kentucky will be stated.

The Legislative Clerk. On Page 32, after Line 3, it is proposed to strike out: 'If the buyer fails to bring an action under this subsection within sixty days from the date of the violation, the Expediter may bring such action on behalf of the United States within one year from the date of the violation. If such action is brought by the Expediter, the buyer shall thereafter be barred from bringing an action for the same violation.'

Mr. Barkley. Mr. President, the language proposed to be stricken out provides if a buyer fails to bring an action under the subsection within sixty days from the date of the violation the Expediter may bring such action on behalf of the United States within one year. **Personally, I do not think it is important. If the purchaser of a house who has been compelled to pay more than the ceiling price is not willing to bring suit to recover the difference, I do not see why the Expediter should be charged with that obligation.** Therefore, I offer the amendment to strike lines four to nine, inclusive, on Page 32.

The President pro tempore. The question is on agreeing to the amendment offered by the Senator from Kentucky (Mr. Barkley).

The amendment was agreed to." (Emphasis supplied.)

(92 Congressional Record, 1946, Page 3430.)

the contrary, it was strongly felt that if the purchaser would not care to bring an action to recover any sum he may have paid in excess of the ceiling price that the Housing Expediter should not be charged with that obligation. The Solicitor General in his Brief for the United States in this case, has stated numerous times that the United States is vis-a-vis the Housing Expediter. We state that certainly the Housing Expediter and the United States are interchangeable parties plaintiff and that it is improper, unjust, unmoral and against the clear intent of the Senate to allow either the Housing Expediter or the United States to bring an action for restitution.

The United States acting for the Housing Expediter should not be permitted to accomplish, under the cloak of seeking equity, a result which either was specifically prohibited from undertaking.

The amendments which were adopted in the Senate eliminated treble damages and eliminated the right of the Expediter to bring an action on behalf of the United States, and they were adopted by conference agreement into the final conference substitute bill, which was then enacted by Congress into the Veterans Emergency Housing Act of 1946 (House Report No. 2000, May 10, 1946, 79th Congress, Second Session).

In United States v. Moore this Court followed the broad interpretation of the phrase "or other order" given in Porter v. Warner Holding Company. In the latter case, 328 U. S. 395, at p. 403, the Court stated that the proposed exercise of the equity jurisdiction (by granting restitution) is consistent with the statutory language and policy, the legislative background, and the public interest. It is more than clear that when considering the Veterans Emergency Housing Act of 1946 the exercise of any equity jurisdiction by granting restitution would be absolutely inconsistent with and contradictory to the express dec-

larations of Congress. This one fact in itself is sufficient reason why the doctrine of restitution as applied in the case of Porter v. Warner Holding Company, should not be extended to the Veterans Emergency Housing Act of 1946.

CONCLUSION.

Congress, in enacting the Veterans Emergency Housing Act of 1946 set up as complete a scheme of enforcement as it felt necessary. Where Congress has provided remedies, these remedies are exclusive. It would be flaunting the will of Congress for the United States, or vis-a-vis the Housing Expediter, the real party in interest, to be permitted to do by indirection what he has been specifically forbidden to accomplish directly. The Senate granted necessary remedies in its enforcement scheme. It considered others not important. It felt that if an injured person was not sufficiently concerned with his damage to file an action in his own behalf to recover for damages, with attorneys' fees and costs, that it should not be the obligation of the Housing Expediter vis-a-vis the United States, to be charged with the obligation of recovering such damages for him.

Respectfully submitted,

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CITATIONS

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INTRODUCTION

The opinions below, jurisdiction, statutes, regulations d facts involved, being fully covered in the briefs of the rties to the cause, will be mentioned here, when neces- ry, by reference; the Veterans' Emergency Housing Act 1946, as the "Veterans' Act", the Housing and Rent t of 1947, as the "Rent Act", the Second War Powers t, as the "War Act", the Emergency Price Control Act 1942, as the "Price Act", and the Act of March 22, 1944 the "Savings Clause Act".

QUESTIONS PRESENTED

I

Can the United States maintain an action for restitution to veterans of the purchase price in excess of the maximum set under the laws governing the Veterans' Emergency Program prior to June 30, 1947 on sales of houses effected subsequent to said date?

II

Did the maximum sales prices, established under the "Veterans' Emergency Housing Act of 1946", cease on June 30, 1947, as to houses not then sold?

ARGUMENT

I

THE UNITED STATES CANNOT MAINTAIN AN ACTION FOR RESTITUTION TO VETERANS OF THE PURCHASE PRICE IN EXCESS OF THE MAXIMUM SET UNDER THE LAWS GOVERNING THE VETERANS' EMERGENCY HOUSING PROGRAM PRIOR TO JUNE 30, 1947 ON SALES OF HOUSES EFFECTED SUBSEQUENT TO SAID DATE.

A cause of action for restitution did not exist on June 30, 1947 when the "Veterans' Act" was repealed because no excess purchase price had been paid and received at that time. This is obvious.

A mere agreement to receive excess purchase price could not give rise to an action for restitution for the same

simple reason. Even an agreement for more than the ceiling price made during the life of the statute and consummated by deed to the purchaser and a mortgage back to the seller, would not result in an action for restitution, although the mortgage could be reformed in equity and the purchaser and mortgagor credited with the excess purchase price, (Helms, et al v. Mullin, et al (Fla.) 41 Southern (2nd) 443).

On June 30, 1947, when the "Veterans' Act" was repealed by the "Rent Act", no one had a cause of action against the defendants for restitution of overcharge because no overcharge had occurred at that time. Hence, no cause of action for restitution could have been preserved by any saving clause or statute.

This Court dealt with a similar situation in The Bank of Hamilton v. The Lessee of Ambrose Dudley, 7 L. ed 496. An Order authorizing and directing administrators to sell property of an estate in Ohio had been entered by the Probate Court. Before the administrators could sell the property, the statute, under which the Court made the Order, was repealed. The Court held that a sale subsequent to the repeal of the law was ineffective. Head note No. 4 of said opinion is:

> "Where administrators, acting under the provision of an Act of Assembly of the State of Ohio, were ordered by the court, vested by the law with the power to grant such order, to sell real estate, and before the sale was made the law was repealed, the powers of the administrators to sell terminated with the repeal of the law."

Judge Marshall said:

> "if the law which authorized the Court to make the order be repealed, the power to sell can never come into existence. The repeal of such law devests no vested estate, but is the exercise of a legislative power which every Legislature possesses."

In Charles v. Lamberson, 1 Iowa 435, 63 Am. Dec. 457, it was held: "To constitute Homestead, under Iowa Act of 1849, exempting Homestead from forced sale, there must have been both ownership and occupation of the premises during the existence of the law", the Court saying as to the claimant: "Until he was in a situation to be protected by the law, no right had accrued or become vested; and when the law was repealed, he stood just as he would though the law had never been enacted."

> "In any event the unqualified repeal of a statute conferring civil rights or powers operates to deprive the citizen of all such rights or powers which are at the time of the repeal inchoate, incomplete, and unperfected, or which have not accrued or become vested." (50 Am Jur, para. 526, page 533)

We must remain cognizant of the truth that at the time of the sales involved the "Veterans' Act" and the "War Act", were not in existence. It would seem axiomatic that no violation of a statute could take place after its' repeal; that no cause of action could accrue under a statute or be preserved by a savings clause or statute on the basis of an act committed afer the repeal of the statute.

II

The MAXIMUM SALES PRICES, ESTABLISHED UNDER THE VETERANS' EMERGENCY HOUSING ACT OF 1946, CEASED ON JUNE 30, 1947, AS TO HOUSES NOT THEN SOLD.

But it is earnestly claimed by the United States that because the defendants agreed in their applications under the "Veterans' Act", for the privilege of constructing the houses, to sell them to veterans for not more than set figures, they were obligated, after the repeal of said Act, to sell according to said applications.

This overlooks the fact that the maximum sales prices on houses were under a program for and during a critical period *only*.

When the program was no longer necessary on June 30, 1947, it was then ended by the repeal. The Congress was not disturbed by the fact that some builders would profit by the lifting of the ceiling prices because it was not individual interest but the over all national interests that caused the program. When the program ended, there was no need or occasion to carry it on as to individual incomplete transactions. To the extent that Congress deemed advisable and in the modified form, *minus the ceiling price provisions*, Congress provided for a future Veterans' Housing Program in the "Rent Act." This, as shown by the lower Court, strongly indicated the intent of Congress to do away with the maximum sales prices. By this time, the housing for sale and rent was adequate, or so nearly so as require this modification in the program.

During the difficult period of May, 1946, when Congress passed the "Veterans' Act", the provision it made in Section 5 for preservation of rights and liabilities was strong and clear. The "Act and all regulations and orders issued thereunder shall be treated as remaining in force, as to rights and liabilities incurred or offenses committed prior to such termination date."

Then in June of 1947, when housing accommodations were not so scarce and conditions not so severe as in May, 1946, Congress expressly repealed said Section 5 and all other sections of the "Veterans' Act" dealing with price ceilings, substituted a new program for the future and as to the past merely provided "That any allocations made or committed, or priorities granted for delivery, of any housing materials or facilities under any regulation or order issued under the authority contained in said Act, and before the date of the enactment of this Act, with respect to Veterans of World War II, their immediate families, and others, shall remain in full force and effect."

Assuming that the language just quoted is abstruce and does not merely mean that allocations, priorities and commitments of housing materials are to remain intact, by what method can it be made to mean that maximum sales prices set under the "Veterans' Act" are to continue in force?

Congress had found no difficulty in the saving clause worded in Section 5 of the "Veterans' Act", none in the "Price Act" and none in the "Savings Clause Act." Did Congress speak in parable, and if so, who is the Daniel to read the enigma?

It is respectfully submitted that the language of the proviso must be given its' ordinary meaning and if this is found unsatisfactory, then it should be discarded. The citizens of this country should never be misled and bound by hidden meaning in law!

Certainly this language does not mean that the "Veterans" Act" is to continue on as to "all business on hand" at the close of business on June 30, 1947. Nor can the words of the "Savings Clause Statute" carry such an enlarged meaning.

Any regulation or order inconsistent with the statute under which it was issued is a nullity. (Manhattan vs. Commissioner of Internal Revenue, 80 L. ed, 1010)

Respectfully Submitted

JOHN G. SIMMS

Amicus Curiae

September 1951.